

& infringement of the exclusive right so secured to the Plaintiff, by said letters patent as aforesaid, & contrary to the form of the statute of the United States in such case made & provided, whereby the Plaintiff has been greatly injured, & deprived of great profits, & advantages which he might otherwise would have derived from said invention, & has sustained actual damages to the amount of one thousand dollars, & by force of the statute aforesaid, an action has accrued to him to recover the said actual damage & such additional amount, not exceeding in the whole three times the amount of such actual damage & as the court may see fit to award order & adjudge. Yet the said Abbott though requested hath not paid the same nor any part thereof but refuses & neglects to do so. —

Massachusetts }
District, ss. }

The President of the United States of America
To the MARSHAL of our District of MASSACHUSETTS, or his Deputy.....GREETING.

WE command you to attach the goods or estate of *Ebenzer E. Abbott*
~~of Oakham in said District of Massachusetts, Palm~~
~~leaf dealer in the County of Worcester~~

Palm leaf Dealer — in our District of Massachusetts,
to the value of *one thousand* — dollars,
and for want thereof, to take the body of the said *Abbott*
(if he may be found in your District) and *him* safely keep, so that you have *him*
before our Judges of our Circuit Court of said United States for the first Circuit, next to
be holden at *Boston*, within and for our said District of Massachusetts, on the *fifteenth*
day of *October* : Then and there, in our said Court, to answer unto

Elias Howe of Cambridge in the County of Middlesex
in said District of Massachusetts Merchant In a
a plea of the case.

Also for that *one Joseph E. Smith* was the original &
first inventor of a certain ^{other new & useful} improvement, or manufacture in the letter
patent herein after mentioned & fully described, the same being a new
& useful improvement in the application of a material called *Palm*
leaf or *Bamb* grass to the stuffing of beds, mattresses, sofas, cushions,
& all other uses for which hair, feathers, moss, or other soft elastic
substances are used; which was not known or used before his said
invention, and said *Smith* being so the inventor, did transfer, sell
& convey to the Plaintiff all his right, title, interest & property
in ^{etc} the said invention & the said Plaintiff did afterwards upon
due application therefor, the said invention not then being in public
use or on sale by his consent or allowance, or that of the said
inventor, ~~obtain therefor~~ and the said Plaintiff being a citizen of
the United States, ~~obtain~~ on the eighteenth day of March in the
year of our Lord eighteen hundred & forty one did obtain ^{under other} letters
patent for said invention in due form of law, under the seal
of the patent office of the United States, signed by the Secretary
of state, & countersigned by the Commissioner of patents of the
United States, & bearing date of the said eighteenth day of March
whereby there was secured to said *Howe*, his heirs, executors, ad-
ministrators or assigns for the term of *fourteen* years from ^{after} the
third day of April in the year of our Lord eighteen hundred
& thirty five the full & exclusive right liberty of making, u-
sing & vending to others to be used the said improvement, or manu-
facture, as by the said letter patent in court to be produced
will fully appear. And the Plaintiff further says that from
the time of the granting to him of the said letter patent
hitherto, the said exclusive right has been & now is of great value
to wit, the value of five thousand dollars. Yet the said *Abbott*
well knowing the premises, but contriving to injure the Plaintiff
did on the first day of April now last past, & at divers times
before & since, during the said term of fourteen years mentioned
in said letter patent, & since the said eighteenth day of March
& before the purchase of this writ in the County of Worcester
in said District of Massachusetts & divers other places therein un-
lawfully, & wrongfully, & without the consent or allowance & against
the will of the Plaintiff make use, send to others to be used
the said invention, manufacture, or improvement in violation

Y^e that one Joseph C Smith was the original & first in-
ventor of a certain new useful manufacture, or improvement in the
manufacture, in the letter patent hereinafter mentioned & fully descri-
bed, the same being a new & useful "Improvement in the applica-
tion of a material called Palm Leaf or Brub grass to the stuff-
ing of beds, mattresses, sofas cushions, & all other uses for which
hair, feathers, moss, or other soft & elastic substances are used;" which
was not known or used before his said invention, & which was not at
the time of his application for a patent as hereinafter mentioned in
public use or on sale with his consent, or allowance, & the said Smith
being so as aforesaid, the inventor thereof & being also a citizen of the
United States, on the third day of April, in the year of our Lord
eighteen hundred & thirty five, upon due application therefor, did
obtain certain letters patent therefor, in due form of law, under the
seal of the United States, bearing date the day & year aforesaid, ~~whereby~~
~~there~~ was secured to him, his heirs, administrators, executors, & assigns
for the term of fourteen years, from & after the said date, the full
& exclusive right & liberty of making using & vending to others to be
used the said improvement, & the said ^{Smith} ~~did~~ thereafter, to wit, on the
twenty seventh day of June in said year, ^{for & in consideration of the sum of four hundred dollars to him paid} ~~in said year~~, duly sell, assign, & transfer
all his right & interest in said letters patent, & the invention therein
specified & mentioned, to the Plaintiff, by his deed, by him made &
executed, in & upon the back of said letters patent, sealed with his
seal & dated on the said twenty seventh day of June & afterwards duly
recorded in the patent office in Washington, agreeably to the statute
in such case made & provided; ~~whereby~~ the said Plaintiff became &
was the ^{true & lawful} owner of said invention, & so being the owner as aforesaid
did afterwards, to wit on the eighteenth day of ^{in the year eighteen hundred & forty one} March, ~~whereby~~ ^{survived & came}
to be cancelled the said letters patent for a defective specification
of said invention, in the specification thereof contained & which said defect
arose from the accident or mistake of the said Smith, & not from any
fraudulent or deceptive intention, & the said Plaintiff ^{upon due application therefor} did thereupon obtain
a new letters patent for the said invention, to him said Plaintiff
^{assign, as aforesaid} in due form of law, under the seal of the patent office of the United
States, signed by the secretary of state, & countersigned by the commis-
sioner of patents of the United States, bearing date on the said eighteenth
day of March in the year of our Lord eighteen hundred & forty one

whereby there was secured to said Howe, his heirs, ~~successors~~,
administrators or assigns for the term of fourteen ~~years~~ years
from safter the said third day of April in the year eighteen
hundred & thirty five, the full exclusive right Liberty of
making, using & vending to others to be used the said improve-
ment, or manufacture as by the said letters patent in court to be
produced, will fully appear. And the Plaintiff further says that
from the time of the granting to him of the said letters patent hith-
erto, the said exclusive right has been, & now is of great value to him
to wit, the value of five thousand dollars. Yet the said Abbott
well knowing the premises, but contriving to injure the Plaintiff
did, on the first day of April, now last past, & at divers times
before & afterwards, during the said term of fourteen years mentioned
in said letters patent, & since the said eighteenth day of March,
& before the purchase of this writ at Oakham in the County of Worces-
ter in said ^{district of Massachusetts} & at divers other places in said district, unlawfully wrong-
fully, & without the consent or allowance, & against the will of
the Plaintiff. make, use, & vend to others to be used the said in-
vention, manufacture, or improvement in violation & infringement
of the exclusive right so secured to the Plaintiff by said letters
patent as aforesaid, & contrary to the form of the statute of the United
States in such case made & provided, whereby the Plaintiff has been greatly
injured & deprived of great profits & advantages which he might & otherwise
would have derived from said invention, & has sustained actual damage
to the amount of one thousand dollars, & by force of the statute afo-
said, an action has accrued to him to recover the said actual damage
& such additional amount, not exceeding in the whole three times
the amount of such actual damages, as the Court may see fit to
order & adjudge. Yet the said Abbott though requested hath not
paid the same, nor any part thereof, but refuses & neglects so to
do -

To the damage of the said *Howe*
as he says, the sum of *one thousand* dollars, which shall then
and there be made to appear, with other due damages. And have you there this writ,
with your doings therein. Witness, the Hon. *Roger B Taney*,
at *Boston*, the *ninth* day of *September* in the year of our
Lord, *one thousand eight hundred and forty one*.

Francis Bassett CLERK.

B. T. Russell

50
Lias Howe

v.
Geyer & Abbott.

Mr Marshall
Attack property
or arrest Defendant should
to bail in the sum of
\$500-

L. J. Russell
sup athy -

215 (Stearns)
Refuge
March 21

Handwritten signature

Under Order of America)
 Mattheus Schaefer District Attorney
 Oct. 1, 1861
 Assistant Secretary
 The day at one o'clock in the afternoon, after having
 all the night, till midnight, and to any real estate in
 the District of Massachusetts. And left a
 summons at his last and usual place
 at New York City.
 P. O. Box 100
 New York City
 Mattheus Schaefer

2 days. - each.

George Bancroft.

George Brown.

George Bancroft.

John H. Covert.

Wm S. Raper.

James Stensley,

Oliver Stensley

John H. Nelson,

Thomas Raiten.

John Sharpley.

John Ross.

Samuel Cook.

11

24

13

11

24

13

11

John H. Covert

Wetropes fees

Costs

Costs

No. 50

Cir. Court. May T. 1942 -

No. 90 Hume vs Abbott

Dependent Costs

1941-

October T. Attendance 32 Days - 10.50

Travel ——— - 2.64

Court ——— .20

1942.

May T. Attendance 22 Days - 7.26

Travel ——— 2.64

Witnesses fees & Travel - 54.40

Marshall fees ——— 5.75

Conrad fee ——— 10.00

Ref. & ——— 4.50

\$ 97.89

Found by B. R. Curtis Off. atty

Jud. Francis Bennett Clerk

Antiquities of
Archaeology

Circuit Court of the U. S. C.

Thirdrd Dis. May Term 1842

Nahum Howe

vs

Ebenezer E. Abbott.

The subscribers severally certify that
we attended the number of days
& travelled the number of miles
set against the our respective names
as witnesses for the deft. & upon his
summons, for the trial of the above
entitled cause -

<u>Names</u>	<u>Days</u>	<u>Miles</u>
Mr A. Crawford - -	4	140
Mrs Mellen - - -	1	
Charles Hopkins - -	2	
J. H. Kallala - - -	1	
John D. Basson - -	2	12
Edward P. Basson	1	6
Wm - Basson - - -	1	20
James Woods - - -	2	120
George S. Ripley	4	120
Nahum Howe - - -	4	120

United States of America.

MASSACHUSETTS DISTRICT, ss.



THE PRESIDENT OF THE UNITED STATES OF AMERICA,

TO THE MARSHAL OF THE DISTRICT OF MASSACHUSETTS,

OR EITHER OF HIS DEPUTIES,

GREETING.

You are hereby required to summons *Nahum Howe Esq*
Johnson - Jonathan D. Bopson, Edward Bopson
of Boston *Bopson, Joseph E. Smith, Jr.*
and Charles P. Pearson of Boston. *Cambridge Port*
if they may be found in your District, to appear before the Judge of our Circuit

Court of the United States of America, to be holden at Boston, within and
for the District of Massachusetts, on *the 18th* day of *May* instant
at *9* o'clock in the forenoon of the same day, in their proper person,
to testify and give evidence of what they and each of them may know, in a certain
cause, now depending undetermined in said Court, in which *Elias Howe*

is Plff _____ are against *Ebenezer Abbott*
vs. Deft _____ and then and there to be heard and tried betwixt
said *Howe & Abbott*

Hereof fail not, and make due return of this writ, with your doings thereon,
into our said Court.

Witness the Honorable

Roger B. Taney

Boston aforesaid, the *17th* day of *May* in the
year of our Lord, one thousand eight hundred and *thirty* *four* *two*.

Francis Barrett Clerk.

999

E. Howe

r

E. E. Abbott

Subpoena

For
Faintly

U.S. of America } May 18 18
(Mac. Dick & Co.) Restaurant Owners

Summoned to within
named lettered
by giving in hand
a true & attested copy

Love Herring Harris
U.S. Dpty Marshal

Ex. 10
Copy 50
Paid 1.05

with 1.45

72.70

UNITED STATES OF AMERICA.

Massachusetts } The President of the United States of America,
District, ss. } To the MARSHAL of the District of Massachusetts or either of his Deputies,

GREETING,

YOU are hereby required to summon *Abrah Kirtledge, Chas*
Adams, J. G. Russell & Oliver Glover
all of Boston in said District of Massachusetts

if they may be found in your District, to appear before the Judge of our *Circuit*
Court of the United States, to be holden at *Boston*, within and for the District of
Massachusetts on the *eighteenth* day of *May*
at *ten* o'clock in the forenoon of the same day, in *their* proper person
to testify and give evidence of what they know relating to a certain cause now
depending undetermined in said Court, in which

Elias Howe is Plaintiff

against

Cheney & Abbott ^{who} ₁₃ *defendants*

then and there to be heard and tried between them; and warn the said *Kirtledge*
Adams, Russell, & Glover

that for default and non-appearance they will have to abide the pains and penalties of
the law in that behalf made and provided.

HEREOF FAIL NOT, and make due return of this writ, with your doings there-
on, unto our said Court, as soon after the service thereof as may be.

Witness, the Honorable *Roger B. Taney*
at *Boston*, aforesaid, the *seventeenth* day of *May*
in the year of our Lord, one thousand eight hundred and forty *two*

Francis Barrett Clerk.

Howe v. Abbott

Specification -

Jan. 1st - 1842 -

Filed

Circuit Court, U. States, Mass^{ts} District
In Vacation

Elias Howe

Abbot

The Deft files the following specification
of the points of his defense

1st That the Letters Patent on which the said
action is founded shew on the face that they
were issued improvidently & without authority
in this, that they are issued to an alleged
assignee without the oath of the supposed
Inventor. —

2^d That the supposed invention in the
said Letters Patent is not the proper and
lawful subject of Letters Patent. —

3 That the supposed invention described
in the said Letters Patent, was not the inven-
tion of the said Patentee nor of the said Joseph
C. Smith, the assignor of the said supposed
invention, but was known and used by one
Jonathan D. Bosson, in Boston in the year
1833 or 1834 or 1835. —

4 That the supposed invention or some
substantial & material part thereof was not new
at the time of the alleged invention thereof
the same having been known to & used by Charles
Johnson & all other manuf^{rs} of him & C^p & B. R. Curtis & all
sluffing for beds &c

Charles Johnson
of Boston?

Vedant

Superior Court of the United
States of America Massachusetts
District May Term 1842

Nathan Howe

vs

Ebenezer S. Abbott

In the above entitled cause the
jury find that the said Defendant
is not guilty in manner & form
as the said Plaintiff hath above
thereof in his declaration alleged

Isaac Waters foreman